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HAWAII
LABOR RELATIONS BOARD

Attorneys for Director of Labor
and Industrial Relations

HAWAII LABOR RELATIONS BOARD

STATE OF HAWAII

In the Matter of) CASE NO. OSAB 2002-19
DIRECTOR, DEPARTMENT OF LABOR) (OSHCO No. N2974)
AND INDUSTRIAL RELATIONS,) (Inspection No. 304217235)
)
Complainant,) STIPULATION AND SETTLEMENT
) AGREEMENT; EXHIBIT A; APPROVAL
vs.) AND ORDER
)
M. DYER & SONS, INC.,)
)
Respondent.)
)

STIPULATION AND SETTLEMENT AGREEMENT

Complainant Director of Labor and Industrial Relations ("Director") and Respondent M. DYER & SONS, INC. ("Respondent") having reached a full and complete settlement of the above-captioned contested case presently pending before the Hawaii Labor Relations Board ("Board") stipulate and agree as follows:

On or about March 18, 2002, the Director, by and through the State of Hawaii's Occupational Safety and Health

Division ("HIOSH"), inspected Respondent's workplace located at 98-054 Kuleana Road, Pearl City, Hawaii, 96782.

As a consequence of said inspection, the Director, through HIOSH's Administrator, issued a Citation and Notification of Penalty on April 5, 2002 ("Citation") to Respondent alleging violations of the Hawaii Occupational Safety and Health Standards and assessed an aggregate penalty of \$875.00. See Exhibit A.

Respondent timely contested the Citation.

THEREFORE, to avoid the expense of litigation and to compromise and settle the above-captioned case, the parties, by and through their respective representatives, stipulate and agree as follows:

1. The Board has jurisdiction over this contested case pursuant to section 396-11, Hawaii Revised Statutes ("HRS").

2. At all relevant times, Respondent maintained a workplace at 98-054 Kuleana Road, Pearl City, Hawaii, 96782.

3. At all relevant times, Respondent was an employer, as defined in HRS § 396-3, and employed employees, as defined in HRS § 396-3, and was therefore subject to the requirements of HRS chapter 396, the Hawaii Occupational Safety and Health Law.

4. Citation 1, item 1, of the Citation, alleging a violation of Section 12-60-2(b)(2)(A)(i), HAR, and its corresponding penalty of \$375.00, is withdrawn.

5. Citation 1, item 2, of the Citation, alleging a violation of 29 CFR 1910.23(c)(1) [Chapter 12-72.1, HAR], and its corresponding penalty of \$500.00, is admitted by Respondent.

6. Respondent agrees that it has or will abate the violation listed in the citation 1, item 2 of the Citation in compliance with the abatement requirements under Hawaii Administrative Rule § 12-51-22. Respondent shall submit the completed abatement certification to HIOSH no later than thirty (30) days after the filing of the instant Agreement; failure to timely do so may result in additional penalties or follow up inspections.

7. The aggregate penalty of \$500.00 shall be paid in full to the Director of Budget and Finance following the issuance of the Hawaii Labor Relations Board's order approving this Stipulated Settlement.

8. Until any administrative rule is adopted by the Director pertaining to ergonomic hazards, in any future citation against Respondent alleging an exposure of its employees to lifting hazards, the Director will not solely rely upon the Revised NIOSH Lifting Equation (1991) and the Washington State administrative rule, W.A.C. §296-62-051, et seq. (2000), to establish a lifting hazard. The Director is not otherwise prevented from issuing a future citation against Respondent alleging a violation of the general duty clause for exposing its employees to lifting hazards based on factors in addition to the Revised NIOSH Lifting Equation (1991) and the Washington State administrative rule, W.A.C. §296-62-051, et seq. (2000). This

Agreement does not limit or preclude the Director from adopting administrative rules pertaining to ergonomic hazards incorporating either the Revised NIOSH Lifting Equation (1991) and the Washington State administrative rule, W.A.C. §296-62-051, et seq. (2000), or both.

9. Except for the stipulated amendments described above, the Citation is confirmed in all other respects and upon approval by the Board, this Agreement and the Citation, as amended, shall become a final order of the Director.

10. Respondent shall post a copy of this Agreement and Order in a prominent place at or near the location of the posting of the Citation, and the Agreement and Order shall remain posted for three working days (excluding weekends and State holidays).

11. Respondent shall continue to comply with HRS chapter 396, the Hawaii Occupational Safety and Health Law, and the related rules.

12. By entering into this Stipulated Settlement, Respondent does not admit that it violated citation 1, item 2. By entering into this Stipulated Settlement, the Director does not agree that it does not have the unreviewable discretion to withdraw a citation before the Hawaii Labor Relations Board.

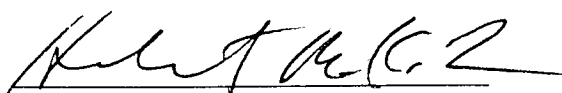
13. Nothing in this Agreement shall bar the Director from taking any action regarding future acts or practices by Respondent which may be alleged to violate HRS chapter 396, the Hawaii Occupational Safety and Health Law, or the related rules.

DATED: Honolulu, Hawaii, June 30, 2003.

M. DYER & SONS, INC.

By: 
its Vice President

APPROVED AS TO FORM:


HERBERT B.K. LAU
Deputy Attorney General


DIRECTOR OF LABOR AND
INDUSTRIAL RELATIONS

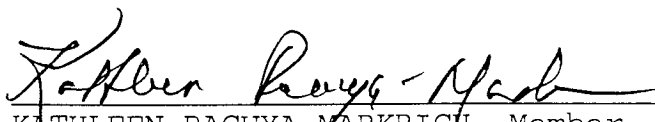

NELSON B. BEFITEL

Attorney for Director of
Labor and Industrial Relations,
State of Hawaii

APPROVED AND SO ORDERED BY
HAWAII LABOR RELATIONS BOARD:

ORDER NO. 52


BRIAN NAKAMURA, Chairman


KATHLEEN RACUYA-MARKRICH, Member


CHESTER KUNITAKE, Member